IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3707 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAVITABEN MOTIBHAI PATEL

Versus

MANILAL SILAR BHAIYA

Appearance:

1. Special Civil Application No. 3707 of 2004

MR PJ VYAS for Petitioner No. 1

MR HARSHIT S TOLIA for Respondent No. 1

..... for Respondent No. 2-16

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 26/07/2004

ORAL JUDGEMENT

What is challenged in the present Special Civil Application under Article 226/227 of the Constitution of India is the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad, dated 18.12.2003 in dismissing the same and confirming the

order passed by the Collector Surat, dated 3.1.2003 in RTS Appeal No. 45 of 2002 by which the entry in favour of the petitioner is set aside and the entry in favour of the respondents who are the purchasers of the land in question is directed to be given effect to.

2. One Motibhai Mathurbhai Patel was owner of land bearing Block No. 9 situate at Village Shekhpur, Taluka-Kamrej. He submitted an application before the Taluka Development Officer for grant of Non-Agricultural use permission for residential purpose. The Taluka Development Officer, Kamrej by his order dated 23rd August 1982 granted Non-Agricultural use permission and on the basis of the same plotting was made and different plots were sold to respondents herein by registered Sale Deed. However, at the relevant time the names of the respondents were not mutated in the record of rights and therefore on the basis of the registered sale deed the Taluka Development Officer initiated proceedings for breach of condition of N.A. permission. In the meantime the original-owner Motibhai Mathurbhai Patel died and name of Savitaben Motibhai Mathurbhai Patel was entered into the record of rights vide entry No. 1198 dated 21.9.1984 as heirs and legal representatives of deceased Motibhai Mathurbhai Patel. The said entry No. 1198 dated 21.9.1984 came to be challenged by the respondents herein before the Deputy Collector, Olpad, in appeal being RTS Appeal No. 45 of 2001 and the Deputy Collector, Olpad by judgment and order dated 5.7.2002 set aside the said Entry No.1198 dated 21.9.1984 and also the entry No. 1306 dated 5.4.1997 which was with regard to order passed by the Taluka Development Officer cancelling the Non-Agricultural use permission.

2.1. Being aggrieved and dissatisfied with the judgment and order passed by the Deputy Collector, Olpad, dated 5.7.2002 passed in RTS Appeal No. 45 of 2001 the petitioner preferred RTS Appeal No. 45 of 2002 before the Collector,Surat and the Collector, Surat by his judgment and order dated 3.1.2003 dismissed the said appeal and confirmed the order passed by the Deputy Collector in setting aside the Entry No. 1198 dated 21.9.1984. Being aggrieved and dissatisfied with the same the petitioner preferred a revision application before the State Government, i.e.,Secretary (Appeals), Revenue Department, being Revision Application No. 29 of 2003. Considering the fact that the entries in favour of the respondents were on the basis of the registered Sale Deed the learned Secretary dismissed the revision application confirming the order passed by the Collector, Surat dated 3.1.2003 passed in RTS Appeal No. 45 of 2002, meaning thereby that the order passed by the Deputy

Collector by which entry in favour of the petitioner being Entry No. 1198 dated 21.9.1984 is set aside. Being aggrieved and dissatisfied with the order passed by the revisional authority dated 18.12.2003 passed by Revision Application No. 29 of 2003 the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri PJ Vyas, learned advocate appearing on behalf of the petitioner has submitted that there is already a civil suit pending between the parties and therefore till the outcome of the civil suit the entry in favour of the petitioner ought to have been continued. He has further submitted that the entry in favour of the petitioner was made in the year 1984 but the same came to be challenged in the year 2001 which could not have been challenged by the respondents after unreasonable period and therefore requested to continue the Entry No. 1198 dated 21.9.1984 which was in favour of the petitioner as heir and legal representative of deceased Motibhai Mathurbhai Patel.

4. On the other hand, Shri Tolia, learned advocate who appears on behalf of the respondents has opposed the present Special Civil Application and submitted that the entries in favour of the respondents were on the basis of the registered Sale Deed and under the provisions of the Bombay Land Revenue Code more particularly under Section 135 of the Code; the transaction on the basis of the registered sale deed is required to be given effect to by the revenue authorities; and their names are rightly directed to be mutated in the record of rights. He has further submitted that so far as the suit between the parties is concerned it has nothing to do with the title,i.e. the suit filed by the respondents for declaration and permanent injunction against the petitioner as the petitioner was trying to disturb the possession of the respondents. He has further submitted that there is no suit filed by the petitioner for quashing and setting aside the registered sale deeds which are there in favour of the respondents and therefore requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing for the parties. The respondents herein are the purchasers of the land in question on the basis of the Non-Agricultural use permission granted in favour of the original-owner, i.e., deceased Motibhai Mathurbhai Patel the respondents have purchased various plots by registered sale deeds. Under the provisions of the Bombay Land Revenue Code,

more particularly under Section 135 of the Code. The transaction on the basis of the registered sale deeds is required to be given effect to. It is also pertinent to note that there is no suit filed by the petitioner for quashing and setting aside the registered sale deeds which are in favour of the respondents. Therefore the transaction in favour of the respondents is still in operation and they have become owners by registered sale deeds. Under the circumstances when on the basis of the registered sale deeds the names of the respondents are directed to be mutated in the record of rights, it cannot be said that there is any illegality committed by any of the authorities below. All the authorities below, i.e., Deputy Collector, Collector, as well as revisional authority have concurrently found that the entry in favour of the petitioner was not proper and that the entry in favour of the respondents on the basis of the registered sale deed was required to be given effect to. Therefore, no interference is required by this Court exercising power under Article 226/227 of the Constitution of India, more particularly the entry in favour of the respondents is on the basis of the registered sale deed. Merely because there is an entry in the record of rights as such it does not confer any right, title or interest in favour of any other party. The entries are made in the record of rights for fiscal purposes in order to collect revenue. In the present case, as on today, there are registered sale deeds in favour of the respondents which are not set aside and there is no proceeding between the parties with regard to setting aside of the registered sale deeds. In view of the facts and circumstances of the case, there is no substance in the present Special Civil Application. Hence, the same is rejected.

[M.R. Shah, J.]

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